Act of 1996. AT&T Missouri and CenturyTel of Missouri, LLC, are non-rural telephone companies.

The commercial mobile radio service provided by MO5 is specifically excluded from the statutory definition of "telecommunications service."[82] Thus, MO5 is not subject to the general regulatory jurisdiction of the Commission. Under the authority granted to the Commission by the FCC, MO5 has requested that the Commission designate it as an ETC for purposes of receiving federal universal service support.

Under the Commission's ETC rule, by applying for designation as an ETC, MO5 voluntarily subjects itself to the Commission's jurisdiction regarding ETC "status and USF funding and the acceptance of any additional rules made applicable to" ETCs.[83] MO5 admits that the Commission's rule should be applied in this case[84] and, therefore, MO5 is subject to the Commission's jurisdiction as set out in the ETC rule.

The purpose of the Universal Service Fund is to provide financial support to carriers that use the support to advance universal service principles. Before a carrier can receive support from the USF, the carrier must be designated as an ETC by the state commission with jurisdiction over the service area where the carrier seeks to apply its USF support.[85]

The state commission must first confirm that the petitioning carrier offers the services that are supported by federal universal service support mechanisms under

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[82] Section 386.020(53)(c), RSMo.

[83] 4 CSR 240-3.570(4)(G).

[84] See, *Issues List*.

[85] 47 U.S.C. § 214(e).

Section 254(c) of the Act.[86] Second, the state commission must confirm that the petitioning carrier advertises the availability of such services and charges using media of general distribution.[87] After making those determinations, the Commission must determine if the request is in the public interest.[88]

The FCC issued an order setting forth additional guidance to be used in conjunction with a public interest finding for competitive ETC designations in areas served by rural telephone companies.[89] In addition, the FCC has issued an order in the *Highland* case[90] that helps define the public interest standard.

On March 17, 2005, the FCC issued a decision[91] regarding how it will evaluate applications for ETC status, and recommending that the states use similar guidelines. Paragraph 41 of the *Report and Order* states:

> 41. In instances where the Commission has jurisdiction over an ETC applicant, the Commission in this Report and Order adopts the fact specific public interest analysis it has developed in prior orders. First, the Commission will consider a variety of factors in the overall ETC determination, including the benefits of increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering. Second, in areas where an ETC applicant seeks designation below the study area level of a rural telephone company, the Commission also will conduct a cream skimming analysis that compares the population density of each wire center in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation.

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[86] 47 C.F.R. § 54.101.

[87] 47 U.S.C. § 214(e).

[88] 47 U.S.C. § 214(e)(2).

[89] *In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia,* CC Docket No. 96-45, FCC 03-338 (rel. April 12, 2004).

[90] *In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia,* CC Docket No. 96-45, FCC 03-338 (rel. April 12, 2004).

[91] 1 Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC-05-46. Rel. March 17, 2005. ("*Report & Order*")

> Based on this analysis, the Commission will deny designation if it concludes that the potential for cream skimming is contrary to the public interest. The Commission plans to use this analysis to review future ETC applications and strongly encourages state commissions to consider the same factors in their public interest reviews. (*footnotes omitted*)

The footnote to the "prior orders" the FCC references in the above paragraph refers to both the *Virginia Cellular Order*[92] and the *Highland Cellular Order*.[93] The FCC wrote in paragraph 28 of the Virginia Cellular Order:

> In considering whether designation of Virginia Cellular as an ETC will serve the public interest, we have considered whether the benefits of an additional ETC in the wire centers for which Virginia Cellular seeks designation outweigh any potential harms. We note that this balancing of benefits and costs is a fact-specific exercise. *In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.* (italics added)

The same italicized phrase is contained in paragraph 22 of the *Highland Cellular Order*.

In addition, the carrier must meet the requirements of the Commission's rule governing ETC designations.[94] The Commission's rule largely incorporates the requirements set out by the FCC.

The Commission has found that MO5 offers the services that are supported by federal universal service support. The Commission has also found that MO5 advertises the

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[92] FCC 03-338, CC Docket 96-45, Released January 22, 2004.
[93] FCC 04-37, CC Docket 96-45, Released April 12, 2004.
[94] 4 CSR 240-3.570.

availability of those services using media of general distribution. Thus, the Commission concludes that MO5 has met the requirements set out in Section 214(e)(1)(A) and (B).

4 CSR 240-3.570 – Uncontested Items

No party contested the fact that MO5 complied with portions of the ETC rule. Therefore, based on the uncontested facts, the Commission concludes that MO5 has complied with the following portions of the ETC rule: (1) providing the populations affected by construction plans, its existing tower locations, and an estimated budget;[95] (2) advertising the availability of its services and the charges for those services;[96] (3) providing Lifeline and Link-Up discounts and advertising those discounts appropriately;[97] (4) providing equal access if necessary;[98] (5) following the CTIA's customer code;[99] and (6) providing a plan outlining the method for handling unusual construction or installation charges.[100] Therefore, the Commission concludes that MO5 provides, or will provide if granted ETC status, these uncontested items as set out in 4 CSR 240-3.570.

4 CSR 240-3.570(2)(A)1 – Intended Use of High-Cost Support

The Commission found that MO5 provided a sufficiently detailed plan for the Commission to make its decision. The Commission concludes that MO5 has provided a statement of intended use of its high-cost support including a detailed description of construction plans with start and end dates and estimated budget amounts. The

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[95] 4 CSR 240-3.570(2)(A)1.
[96] 4 CSR 240-3.570(2)(A)6.
[97] 4 CSR 240-3.570(2)(A)7.
[98] 4 CSR 240-3.570(2)(A)9.
[99] 4 CSR 240-3.570(2)(B).
[100] 4 CSR 240-3.570(2)(C).

Commission further concludes that MO5 shall, as a condition of its grant of ETC status, file a plan outlining more specifically, the proposed USF supportable upgrades for the first two years of USF support as further set out below. This condition is reasonable in that it will allow the Commission to more easily review the certification filings that MO5 will need to make on an annual basis.

4 CSR 240-3.570(2)(A)2 – Only USF Supportable Services

The Commission previously found that MO5's five-year budget in conjunction with Mr. Simon's testimony was sufficient for the Commission to make a decision regarding what services MO5 will provide using USF support. The Commission found that MO5 includes taxes and depreciation expenses in its proposed budget.

Section 254(e) of the Act states that "[a] carrier that receives such [USF] support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. No evidence was provided that income taxes or depreciation expenses are USF supportable items. Also, MO5 did not show that income tax and depreciation expenses are not the type of items that would not otherwise normally occur.[101] The Commission concludes that income tax and depreciation expense are not USF supportable items.

The Commission has determined, however, that MO5 will spend the USF support on the provision, maintenance, and services that are supportable, such as new towers and upgrades, and MO5 has shown sufficient supportable items in its planned upgrades to meet this element. The Commission concludes that it is reasonable to condition the grant of ETC status on MO5 not using USF high-cost support for taxes or depreciation expenses.

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[101] 4 CSR 240-3.570(2)(A)3.G.

The Commission, therefore, concludes that MO5 has met the requirement to show that high-cost support shall only be used for the provision, maintenance, and upgrading of facilities and services for which the support is intended in the Missouri service area for which it was granted. In addition, the Commission concludes that it is reasonable to require MO5, as a condition of the grant of ETC status, to provide a revised estimated budget showing only the USF supportable items for which it proposes to spend USF funds in the next two years.

Furthermore, the Commission concludes that under the ETC rule, failure to demonstrate "that high-cost support was used to improve coverage, service quality or capacity in the Missouri service area in which ETC designation was granted and that support was used in addition to any expenses the ETC would normally incur,"[102] shall result in the Commission refusing to certify MO5 for USF support.[103]

In addition, based on the facts above, the Commission concludes that MO5 is providing access to interexchange service.

4 CSR 240-3.570(2)(A)3 – Expenses Would Not Otherwise Occur

AT&T Missouri argued that MO5 did not demonstrate any meaningful improvement in signal coverage in its six wire centers, or otherwise demonstrate how funding will be used to further the provision of supported services in those areas. Thus, AT&T Missouri argues that these exchanges should be excluded from ETC designation. The Commission has found that the coverage maps provided by MO5 show sufficient detail for it to reach its decision in this matter. The maps were broken down on a wire center

[102] 4 CSR 240-3.570(4)(D).

[103] 4 CSR 240-3.570(5)(E).

basis and the appendices to the various testimony included projected dates for the improvements as discussed above.

The Commission concludes that the evidence provided by MO5 demonstrates how each of the wire centers will benefit. The Commission also concludes that MO5 will provide improved coverage, service quality or capacity in each of the wire centers where ETC designation is requested, including the six AT&T Missouri wire centers.

MO5's Appendix M included budgets for unsupportable items and expenses that it would make regardless of the ETC designation. However, the testimony clarified that MO5 will make the USF supportable improvements as laid out in the five-year plan as necessary so that it spends funds on cell towers and services that it would not have otherwise spent without the USF funds. The Commission concludes, based on the remaining items in the five-year plan and the testimony, that MO5 intends to spend all its USF support on supportable services in the next two years and that the improvements would not be made without USF support.

As a condition of its ETC designation, the Commission will require MO5 to provide a new two-year budget which includes only items intended for USF support as specified in 4 CSR 240-3.570(2)(A)2.A that would not otherwise be made without USF support, and the Commission requires that USF support not be spent on taxes or depreciation as specified above.

4 CSR 240-3.570(2)(A)4 – Ability to Remain Functional in an Emergency

Only AT&T suggests that MO5's has not provided sufficient detail about how the system is designed for the Commission to make a determination about emergency capabilities. Neither the Commission's Staff nor any other party objected to the sufficiency of this testimony. Based on the evidence provided, including rerouting calls, redundant networks, the system not operating at capacity, and back-up generators, the Commission concludes that MO5 has demonstrated its ability to remain functional in an emergency.

4 CSR 240-3.570(2)(A)8 – Service Quality Standards

The Commission has found that MO5 will comply with all the applicable consumer privacy protection standards as provided in 47 C.F.R. 64 Subpart U.[104] Unlike the ILECs, MO5, as a wireless carrier, is not subject to the Commission's quality of service standards. However, MO5 has committed to complying with the CTIA Consumer Code and offers its customers a "test drive" of its service before a final commitment. MO5 will also be subject to the provisions of the Commission's ETC rule. Considering these facts, the Commission concludes that MO5 will satisfy consumer privacy protection standards as provided in 47 C.F.R. 64 Subpart U and any service quality standards that are applicable.

4 CSR 240-3.570(2)(A)10 – Local Usage Plan Comparable to ILEC's Plan

MO5 will offer local calling plans that are designed to be comparable to that of the ILEC. Each of the Lifeline plans and the "ILEC-equivalent" plan has unlimited local calling to a local calling scope that is at least as large as the ILEC, with the exception of the Bethel, Leonard, and Winigan exchanges. Although the MO5 Lifeline rates are more than those charged by the ILECs, the level of services is also increased. Each of the current MO5 plans includes multiple vertical services and some will offer a larger calling scope than the ILEC. Furthermore, MO5's customers will have limited mobility. While the offerings are not identical, the Commission concludes that MO5 offers a local usage plan that is

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[104] Ex. 3, p. 8.

comparable to those offered by the ILECs with the exception of the Bethel, Leonard, and Winigan exchanges.

The Commission further concludes that requiring a credit check of Lifeline customers who do not have unpaid accounts with the company is not a reasonable requirement. In order to protect Lifeline customers, the Commission finds that it is reasonable to condition the grant of ETC designation upon MO5 offering service to Lifeline customers without requiring a credit check.

4 CSR 240-3.570(2)(A)5 – Public Interest

Section 214(e)(2)[105] of the Act, as well as the FCC regulations,[106] and the Commission's rule[107] govern the designation of ETC status. Section 214(e)(2) of the Act states, in relevant part:

> Upon request and consistent with the public interest, convenience and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

The Commission's ETC rule also requires that the applicant for ETC designation demonstrate that the designation is in the public interest.[108] Thus, the Commission must determine if the designation of an additional ETC is in the public interest.

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[105] 47 U.S.C. § 214(e)(2).

[106] 47 C.F.R. § 54.201, *et seq.*

[107] 4 CSR 240-3.570.

[108] 4 CSR 240-3.570(2)(A)(5).

The FCC has found that an increase in competition is in the public interest. This is based on the fact that one of the main goals of the Telecommunications Act of 1996 was to increase competition. Thus, under the FCC's analysis, having MO5 designated as an ETC will have some benefit of increasing competitive choice. In the current case MO5 presented evidence showing increased competition in the form of new service offerings. The Commission concludes, based on the record before it, that there will be some benefit of increased competition by designating MO5 an ETC.

The second factor that the FCC considered is the impact on the Universal Service Fund. The impact on the fund of MO5's annual USF support of $1,534,230 is not in and of itself a significant portion of the fund. The FCC acknowledged, however, that there were concerns about the overall impact of designating multiple carriers, including wireless, as ETCs.

The ILECs believe a stricter analysis should be done. The ILECs suggest that the Commission must look to the Universal Service Principles in Section 254(b) to determine the impact on the USF. The ILECs also believe that the USF will grow too rapidly with the addition of wireless companies. The Commission is also concerned with the rapid growth of the Universal Service Fund, and awaits further guidance from the FCC and the United States Congress on improvements to the USF. The Commission must, however, resolve the case before it. Based on the amount of the USF compared to this particular company's expected USF support, the Commission concludes that the impact of this specific ETC designation on the USF fund as a whole will be minimal.

The Commission has found that the advantages that MO5 will provide include mobility, access to emergency services, and an increased local calling scope for some customers. Disadvantages include such things as dead spots and dropped calls. Granting MO5 an ETC designation will benefit the public by enabling MO5 to bring wireless service, including E911 and GSM, to many remote locales and by increasing competition for primary telephone service in remote areas. In addition, Lifeline and Link-Up customers will have access to service that would otherwise be unavailable to them. The Commission concludes that the benefits to the public in rural Missouri of granting MO5 ETC status will outweigh the potential detriments to the USF fund.

Another disadvantage of wireless service is that the company is not subject to the mandatory quality of service standards with which the landline companies must comply. MO5 has committed to complying with the CTIA Consumer Code for Wireless Service and any applicable federal quality of service standards. Furthermore, the Commission has set out additional conditions in this order for the annual certification. In addition, enforcement of the Commission's ETC rule will ensure that the USF support is being used appropriately.

Finally, there was no evidence that suggested MO5 was currently unable to serve most of the areas where ETC designation is requested. However, MO5 did not demonstrate that it had the ability to provide a local calling plan equivalent to the local calling scope of the ILEC in the Bethel, Leonard, and Winigan wire centers. The ETC rule provides what the company must do to provide service if requested in an area where coverage does not exist. With regard to the Winigan exchange, MO5 admitted that it would most likely have to report to the Commission that it could not serve those customers outside of its service area if they requested service. The Commission concludes that because of the number of customers served relative to the number outside the service area, the fact that MO5 will not be able to serve those customers outside its service area, and that this is the only wire center of Northeast for which service is requested, it must exclude the Winigan wire center from MO5's designated ETC area.

With regard to the Leonard and Bethel wire centers, the entire Leonard wire center is in MO5's licensed service area. And, a majority of the Bethel wire center is in the service area. Furthermore, the proprietary information convinces the Commission that it is appropriate to include these wire centers in the ETC designated area. However, in order to provide a comparable local calling scope, as a condition of its ETC status, MO5 must provide a local calling scope for its Lifeline and "ILEC-equivalent" plans that is equal or greater than the calling scope of the ILEC.

Thus, the Commission concludes that MO5 has the ability to serve the entire ETC area with the exception of the Winigan exchange which is excluded.

Based on all the foregoing facts, the Commission concludes that the benefits to the public of granting MO5 ETC status outweigh the detriments of granting ETC status.

Conclusion

The Commission determines that the grant of ETC status to MO5 is in the public interest because MO5 has provided evidence to show that the public benefits from designating MO5 an ETC for USF purposes will outweigh the detriments of doing so. The Commission conditions this grant of ETC designation on the conditions set out above regarding filing of additional information, continued compliance with the Commission's ETC rule, not spending USF monies on income tax or depreciation expenses, and providing a local calling scope at least as large as the ILEC's local calling scope. In addition, the Commission excludes from the ETC designation the Winigan wire center. If MO5 does not strictly abide by the Commission's ETC rule, especially the provisions requiring that funds be spent only on USF supportable services, the Commission shall not certify MO5 as an ETC on an annual basis and shall rescind this ETC designation.

MO5 has shown that it intends to bring additional services and technology to rural telecommunications customers within the state of Missouri. MO5 has further shown that by granting MO5 ETC status, these rural customers will have better signal coverage, enhanced 911 capabilities, and more competitive choices for telecommunications service.

MO5 has met its burden to show that a grant of ETC status in the requested wire centers, with the exception of the Winigan wire center, is "consistent with the public interest, convenience, and necessity." Therefore, the Commission shall grant MO5's application for ETC designation with the exceptions and conditions set out herein.

IT IS ORDERED THAT:

1. Missouri RSA No. 5 Partnership's application to be designated an eligible telecommunications carrier for federal universal service fund purposes is granted with the exception of the Winigan wire center conditioned on compliance with the items set out in ordered paragraphs 2-6 below.

2. Missouri RSA No. 5 Partnership shall file no later than September 26, 2006, a revised budget and build-out plan as specified in the body of this order which includes only items for which USF support is intended as set out in 4 CSR 240-3.570(2)(A)2.A and which would not have been made without USF support.

3. Missouri RSA No. 5 Partnership shall not use Universal Service Funds for income tax or depreciation expense.

4. Missouri RSA No. 5 Partnership shall strictly abide by the provisions of 4 CSR 240-3.570.